



APRIL '90

State of New Jersey
DEPARTMENT OF ENVIRONMENTAL PROTECTION
DIVISION OF HAZARDOUS WASTE MANAGEMENT
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IN THE MATTER OF
THE TOWN OF KEARNY AND
THE TOWN OF SECAUCUS
CHROMITE ORE PROCESSING RESIDUE SITES
AND
OCCIDENTAL CHEMICAL CORPORATION; and
CHEMICAL LAND HOLDINGS, INC.,
Respondents

ADMINISTRATIVE
CONSENT
ORDER

This Administrative Consent Order is issued pursuant to the authority vested in the Commissioner of the New Jersey Department of Environmental Protection (hereinafter "NJDEP" or the "Department") by N.J.S.A. 13:1D-1 et seq. and the Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq., and the Spill Compensation and Control Act, N.J.S.A. 58:10-23.11a et seq., and duly delegated to the Assistant Director for the Division of Hazardous Waste Management pursuant to N.J.S.A. 13:1B-4.

FINDINGS

1. Occidental Chemical Corporation (hereinafter "Respondent" or "OCC"), is a New York corporation with its principal place of business at 5005 LBJ Freeway, Dallas, Texas. OCC is a successor to Diamond Shamrock Chemicals Company (hereinafter "Diamond"), having purchased all the stock thereof in September of 1986 from Maxus Energy Corporation (hereinafter "Maxus"), a Delaware corporation with its principal place of business at 717 North Harwood Street, Dallas, Texas.

2. Diamond owned and operated a chromate chemical production facility at 1015 Belleville Turnpike, in the Town of Kearny, County of Hudson, State of New Jersey, at a location designated on the 1978 municipal tax map as Block 287, Lots 46 and 47 (hereinafter "the Diamond Site"). Diamond acquired the Diamond Site in 1948 and operated the chromate chemical production facility thereat from approximately 1948 through approximately 1976. Chemical Land Holdings, Inc. (hereinafter "Respondent" or "CLE"), the current holder of title of the Diamond Site, is a Delaware corporation with its principal place of business at 717 North Harwood Street, Dallas, Texas and is a wholly-owned subsidiary of Maxus.

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3. The operations described in paragraph 2 above, resulted in the generation of chromite ore processing residue, which contain chromium and its compounds and may contain hexavalent chromium, which are hazardous substances as defined by the Spill Compensation and Control Act, specifically, N.J.S.A. 58:10-23.11bk, and the regulations promulgated pursuant thereto, N.J.A.C. 7:1E-1a et seq., and are pollutants as defined in the Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq., specifically N.J.S.A. 58:10A-3n, and the regulations promulgated pursuant thereto, N.J.A.C. 7:14A-1.2(c).

4. In a letter dated January 17, 1984, Diamond informed the Department that chromite ore processing residue was produced as a result of the chromate chemical production operations which took place at the Diamond Site.

5. In the January 17, 1984, letter from Diamond referred to in paragraph 4 above, Diamond also indicated that significant amounts of the chromite ore processing residue was transported from the Diamond Site and was deposited at offsite locations.

6. The Department has determined that chromite ore processing residue from Diamond's operations described above, was distributed by third parties as fill material for use in certain construction and development projects in the Town of Kearny and as fill at one (1) location in the Town of Secaucus. The chromite ore processing residue was used for the backfilling of demolition sites, preparation for building foundations, construction of tank berms, roadway construction, the filling of wetlands and other construction and development related purposes.

7. The Department has found chromite ore processing residue contamination among other places, on the walls and floors of buildings, both interior and exterior, on the surfaces of driveways and parking lots and on the surfaces of unpaved areas at certain locations in the Town of Kearny and the Town of Secaucus. These locations include active work sites, publicly owned lands, industrial and commercial establishments and other populated and environmentally sensitive areas in the Town of Kearny and one (1) location in the Town of Secaucus.

8. The Department has determined that Diamond's chromate chemical production facility referenced in paragraph 2 above, and those of Allied-Signal Incorporated (hereinafter "Allied-Signal"), located in the City of Jersey City, and PPG Industries, Inc., (hereinafter "PPG"), also located in the City of Jersey City, were the only chromate chemical production facilities in New Jersey and were the only such facilities within an approximately one-hundred and fifty mile radius of Hudson County. The Department has found no evidence that any of the chromite ore processing residue from facilities outside such radius was deposited in, or was taken to either the Town of Kearny or the Town of Secaucus.

9. The Department has determined that chromite ore processing residue has been discharged and is present at each of the sites listed in Attachment One, which is attached hereto and made a part hereof. For purposes of this Administrative Consent Order, unless otherwise herein indicated, the term "Sites" includes all the sites listed in Attachment One and all other site(s) which are contaminated with chromite ore processing residue originating from the Diamond Site. The Department has determined that the chromite ore

processing residue at the Sites and the Diamond Site which contain chromium and its compounds, and other hazardous substances at the Diamond Site, have been discharged into the waters and/or onto the lands of the State of New Jersey in violation of Section 4 of the Spill Compensation and Control Act, N.J.S.A. 58:10-23.11c.

10. The Department has determined that the chromite ore processing residue at the Sites and the Diamond Site is identifiable by virtue of its chemical and physical characteristics, and is chemically and physically indistinguishable from the chromite ore processing residue generated by Diamond's, Allied-Signal's and/or PPG's chromate chemical production facilities referenced in paragraphs 2 and 8 above.

11. The Department has determined that uncontrolled discharges of hazardous substances from the chromite ore processing residue at the Sites and the Diamond Site are within an area of high population density in the State of New Jersey and that the risk of human exposure to chromite ore processing residue at the Sites and the Diamond Site is ongoing. Chromium and its compounds contained in the chromite ore processing residue, are potentially toxic to humans and may include demonstrated human carcinogens. The Department has determined that these conditions create a substantial risk of imminent danger to human health and the environment.

12. Pursuant to N.J.S.A. 58:10-23.11fa, whenever any hazardous substance is discharged, the Department may, in its discretion act to remove or arrange for the removal of such discharge or may direct the discharger to remove, or arrange for the removal of, such discharge.

13. On December 2, 1988, the Department issued a Directive (hereinafter "December 2, 1988 Directive") to OCC, Maxus, Allied-Signal and PPG pursuant to the Spill Compensation and Control Act, N.J.S.A. 58:10-23.11a et seq., directing them to undertake interim remedial actions at eighty-six (86) sites in Hudson County, including all the Sites and the Diamond Site. The December 2, 1988 Directive to the extent it addresses the Diamond Site and the Sites in the Town of Kearny and the Town of Secaucus, is incorporated herein and made a part hereof by reference. Except as incorporated herein, the December 2, 1988 Directive remains in full force and effect.

14. In response to the December 2, 1988 Directive identified in paragraph 13 above, OCC agreed to implement interim remedial measures for the Sites and the Diamond Site. A draft interim remedial measures work plan (hereinafter "IRM Work Plan") dated June 16, 1989, prepared pursuant to the December 2, 1988 Directive was submitted by OCC to the Department for Sites numbered 45, 62, 110, 54, and 52. On July 17, 1989, OCC began implementation of the interim remedial measures at these five (5) sites. OCC has agreed to submit and implement IRM Work Plan(s) for the remaining Sites and the Diamond Site, as specified by this Administrative Consent Order. All IRM Work Plan(s) approved by the Department prior to the effective date of this Administrative Consent Order for compliance with the December 2, 1988 Directive, shall be deemed approved under this Administrative Consent Order.

15. The Department has determined that the Respondents are responsible for the discharge of hazardous substances at the Diamond Site, emanating from the Diamond Site or which has emanated from the Diamond Site.

16. The Department has determined that OCC is responsible for the discharge of chromite ore processing residue, chromium and its compounds at the Sites, emanating from the Sites or which has emanated from the Sites.

17. The Department has determined that pursuant to N.J.S.A. 58:10-23.11gc, the Respondents are strictly liable, jointly and severally, without regard to fault, for all costs of the cleanup and removal of the hazardous substances discharged at the Sites and the Diamond Site and other locations in Hudson County at which chromite ore processing residue and chromium and its compounds from the Sites and/or the Diamond Site have been discharged.

18. The Department has determined that the pollutants referenced in these FINDINGS discharged onto the lands and into the water of the State of New Jersey without a valid New Jersey Pollutant Discharge Elimination System Permit in violation of the Water Pollution Control Act N.J.S.A. 58:10A-1 et seq., specifically, N.J.S.A. 58:10A-6.

19. The Department has determined that the hazardous substances referenced in these FINDINGS have discharged into the waters and onto the lands of the State of New Jersey in violation of the Spill Compensation and Control Act, specifically N.J.S.A. 58:10-23.11c.

20. To resolve this matter without the necessity for litigation, OCC has agreed to conduct interim remedial measures and a remedial investigation and feasibility study ("RI/FS"); and to design and implement an environmentally sound remedial action alternative to remedy all the hazardous substances as defined by the Spill Compensation and Control Act and pollutants as defined in the Water Pollution Control Act, discharged at the Diamond Site, emanating from the Diamond Site, or which has emanated from the Diamond Site. CLH has agreed to place use and access restrictions in the record of title of the Diamond Site and record the restrictions with the Hudson County Clerk.

21. Furthermore, the RI/FS and design to implement a remedial action alternative described in paragraph 20 above, to be implemented by OCC, shall remedy the problem associated with chromite ore processing residue, chromium and its compounds whether or not any hazardous substances or pollutants are intermingled therewith, at, emanating from or which have emanated from the Sites, and other locations in Hudson County to be identified pursuant to this Administrative Consent Order.

ORDER

NOW THEREFORE IT IS HEREBY ORDERED AND AGREED THAT:

I. Penalties and Reimbursement of Prior Costs

22. OCC agrees to pay to the Department as provided for in this paragraph, a civil penalty of two million five hundred thousand dollars (\$2,500,000.00) for all violations of the Spill Compensation and Control Act, N.J.S.A. 58:10-23.11a et seq., for all discharges of chromite ore processing residue from the Diamond Site. Within thirty (30) calendar days after the effective date of this Administrative Consent Order, OCC shall pay one million five hundred thousand dollars (\$1,500,00.00), the first of three

(3) penalty payments. Within three hundred sixty-five (365) calendar days after the effective date of this Administrative Consent Order, OCC shall pay, the five hundred thousand dollars (\$500,000.00), the second of three (3) penalty payments. Within seven hundred thirty (730) calendar days after the effective date of this Administrative Consent Order, OCC shall pay five hundred thousand dollars (\$500,000.00), the third of three (3) penalty payments. If OCC fails to make any of these payments in the time frames specified above, OCC expressly agrees that the Department may withdraw any remaining unpaid penalty payment amounts from the Chromium Sites Trust Agreement established pursuant to paragraph 57 below. The Department shall not seek, demand, or otherwise claim any civil or civil administrative fines or penalties from, or initiate any action for civil or civil administrative fines or penalties against, the Respondents based upon their alleged acts or omissions (including, without limitation, failure to report), or any continuing releases, migration or discharges of hazardous substances or pollutants, in connection with or arising in any way out of the disposal, discharge, handling, treatment or transportation of hazardous substances or pollutants, occurring prior to the effective date of this Administrative Consent Order, at or from the Diamond Site. Although it agrees to pay this civil penalty, OCC denies any violation of statute, rule, regulation or ordinance and payment of this penalty is without admission of fact, fault, liability or obligation.

23. Within thirty (30) calendar days after the effective date of this Administrative Consent Order, OCC shall submit the amount of fifty-eight thousand four hundred seventy-six dollars and seventy-four cents (\$58,476.74) to the Department as payment for all costs incurred by the Department up until February 9, 1990, in connection with the investigation of, and response to, the matters described in the FINDINGS hereinabove, including the costs associated with the preparation of this Administrative Consent Order.

24. Payment of the amounts in paragraphs 22 and 23 above shall be made by a cashier's or certified check payable to the "Treasurer, State of New Jersey". Payment shall be submitted to the Department contact listed in paragraph 55 below.

II. Remedial Investigation and Cleanup

A. Interim Remedial Measures

25. OCC shall continue implementation of all Interim Remedial Measures (hereinafter "IRM") currently being undertaken in accordance with any Directive IRM Work Plan approved by the Department as of the effective date of this Administrative Consent Order.

26. Within sixty (60) calendar days after the effective date of this Administrative Consent Order, OCC shall submit to the Department a detailed draft Interim Remedial Measures Work Plan (hereinafter "IRM Work Plan"), in accordance with the scope of work set forth in Appendix A which is attached hereto and made a part hereof, for the Diamond Site and the Sites for which OCC has not submitted a Directive IRM Work Plan to the Department as of the effective date of this Administrative Consent Order.

27. Within forty-five (45) calendar days after receipt of the Department's written comments on the draft IRM Work Plan(s), OCC shall modify the draft IRM Work Plan(s) to conform to the Department's comments and shall submit the modified IRM Work Plan to the Department. Within this timeframe, OCC may explain verbally or in writing to the Department, the reason(s) why OCC believes the Department's comments should not be incorporated. Representatives of the Department may meet with representatives of OCC within this timeframe to discuss its comments. The determination as to whether or not the modified IRM Work Plan(s), as resubmitted, conforms to the Department's comments and is otherwise acceptable to the Department shall be made solely by the Department in writing.

28. Upon receipt of the Department's written final approval of the IRM Work Plan(s), OCC shall implement the approved IRM Work Plan(s) in accordance with the approved schedule therein. Within thirty (30) calendar days after completion of the interim remedial actions at each Site, OCC shall submit to the Department a report detailing the measures taken by OCC to implement the IRM Work Plan, including Site map(s) showing the location(s) at the Site where such measures were taken.

B. Remedial Investigation

29. Within thirty (30) calendar days after the effective date of this Administrative Consent Order, OCC shall submit to the Department a report detailing a proposed schedule and the manner of conducting the development of the draft Remedial Investigation Work Plan (hereinafter the "RI Work Plan"). Within one-hundred and fifty (150) calendar days after the effective date of this Administrative Consent Order, OCC shall submit to the Department a detailed draft RI Work Plan for the Diamond Site and the Sites in accordance with the scope of work set forth in Appendices B, C and D, which are attached hereto and made a part hereof.

30. Within forty-five (45) calendar days after OCC's receipt of the Department's written comments on the draft RI Work Plan for the Diamond Site and the Sites, OCC shall modify the draft RI Work Plan to conform to the Department's comments and shall submit the modified RI Work Plan to the Department. Within this timeframe, OCC may explain verbally or in writing to the Department, the reason(s) why OCC believes the Department's comments should not be incorporated. Representatives of the Department may meet with representatives of OCC within this timeframe to discuss its comments. The determination as to whether or not the modified RI Work Plan, as resubmitted, conforms to the Department's comments and is otherwise acceptable to the Department shall be made solely by the Department in writing.

31. Upon OCC's receipt of the Department's written approval of the RI Work Plan, OCC shall conduct the remedial investigation in accordance with the approved RI Work Plan and the schedule therein.

32. OCC shall submit to the Department a draft Remedial Investigation Report (hereinafter "RI Report") for the Diamond Site and the Sites in accordance with the approved RI Work Plan developed in accordance with Appendix B, and the schedule therein.

33. If upon review of the draft RI Report the Department determines that additional remedial investigation is required, OCC shall conduct such additional remedial investigation pursuant to Appendix B, as required by the Department in writing and submit a second draft RI Report.

34. Within forty-five (45) calendar days after OCC's receipt of the Department's written comments on the draft or second draft (if applicable pursuant to the preceding paragraph) of a RI Report, OCC shall modify the draft or second draft RI Report to conform to the Department's comments and shall submit the modified RI Report to the Department. Within this timeframe, OCC may explain verbally or in writing to the Department, the reason(s) why OCC believes the Department's comments should not be incorporated. Representatives of the Department may meet with representatives of OCC within this timeframe to discuss its comments. The determination as to whether or not the modified RI Report, as resubmitted, conforms with the Department's comments and is otherwise acceptable by the Department shall be made solely by the Department in writing.

C. Feasibility Study

35. Within one-hundred and eighty (180) calendar days after OCC's receipt of either the Department's written final approval of the RI Report for the Diamond Site and the Sites, or the Department's written notice to proceed, OCC shall submit to the Department a detailed draft Feasibility Study Work Plan (hereinafter, "FS Work Plan") for the Diamond Site and the Sites in accordance with the scope of work set forth in Appendix E, which is attached hereto and made a part hereof.

36. Within forty-five (45) calendar days after OCC's receipt of the Department's written comments on the draft FS Work Plan, OCC shall modify the draft FS Work Plan to conform to the Department's comments and shall submit the modified FS Work Plan to the Department. Within this timeframe, OCC may explain verbally or in writing to the Department, the reason(s) why OCC believes the Department's comments should not be incorporated. Representatives of the Department may meet with representatives of OCC within this timeframe to discuss its comments. The determination as to whether or not the modified FS Work Plan, as resubmitted, conforms to the Department's comments and is otherwise acceptable to the Department shall be made solely by the Department in writing.

37. Upon OCC's receipt of the Department's written approval of the FS Work Plan, OCC shall conduct the feasibility study in accordance with the approved FS Work Plan and the schedule therein.

38. OCC shall submit to the Department a draft Feasibility Study Report (hereinafter "FS Report") for the Diamond Site and the Sites in accordance with Section III of Appendix E and the approved FS Work Plan developed in accordance with Appendix E, and the schedule therein.

39. Within forty-five (45) calendar days after OCC's receipt of the Department's written comments on the draft FS Report, OCC shall modify the draft FS Report to conform to the Department's comments and shall submit the

modified FS Report to the Department. Within this timeframe, OCC may explain verbally or in writing to the Department, the reason(s) why OCC believes the Department's comments should not be incorporated. Representatives of the Department may meet with representatives of OCC within this timeframe to discuss its comments. The determination as to whether or not the modified FS Report, as resubmitted, conforms to the Department's comments and is otherwise acceptable to the Department shall be made solely by the Department in writing.

D. Remedial Action

- 40. The Department will make each selection of the remedial action alternative based upon the final FS Report submitted in accordance with paragraph 39 above, and on the criteria set forth in Appendix E, Section I.D. If OCC fails to submit the final FS Report in compliance with paragraph 39 above, then the Department will make selection of remedial action alternative(s) based on the criteria set forth in Appendix E, Section I.D.

41. a. Within one hundred and twenty (120) calendar days after OCC's receipt of the Department's written notification of its selection of the remedial action alternative(s), OCC shall submit to the Department a detailed draft Remedial Action Plan in accordance with the scope of work set forth in Appendix F, which is attached hereto and made a part hereof. Within this timeframe, OCC may explain verbally or in writing to the Department, the reason(s) why OCC disagrees with the Department's selected remedial action alternative(s). Representatives of the Department may meet with representatives of OCC within this timeframe to discuss its selection of the remedial action alternative(s). If the Department has determined that more than one alternative for the Diamond Site and/or one or more of the Sites meets the criteria set forth in Appendix E, Section I.D., OCC may decide which of these alternatives it will implement.

b. Within ninety (90) calendar days after OCC's receipt of the Department's written comments on the draft Remedial Action Plan, OCC shall modify the draft Remedial Action Plan to conform to the Department's comments and shall submit the modified Remedial Action Plan to the Department. Within this timeframe, OCC may explain verbally or in writing to the Department, the reason(s) why OCC believes the Department's comments should not be incorporated. Representatives of the Department may meet with representatives of OCC within this timeframe to discuss its comments. The determination as to whether or not the modified Remedial Action Plan, as resubmitted, conforms to the Department's comments and is otherwise acceptable to the Department shall be made solely by the Department in writing.

42. a. In accordance with the schedule contained in the approved Remedial Action Plan referenced in paragraph 41 above, OCC shall submit to the Department detailed engineering design(s) and cost estimate(s) for the selected remedial action alternative(s).

- b. Within ninety (90) calendar days after OCC's receipt of the Department's written comments on the detailed engineering design(s) and cost estimate(s), OCC shall modify the detailed engineering design and cost estimates to conform to the Department's comments and shall submit the modified detailed engineering design and cost estimates to the Department. Within this timeframe, OCC may explain verbally or in writing to the Department, the reason(s) why OCC believes the Department's comments should not be incorporated. Representatives of the Department may meet with representatives of OCC within this timeframe to discuss its comments. The determination as to whether or not the modified detailed engineering design and cost estimates as resubmitted, conform to the Department's comments and is otherwise acceptable to the Department shall be made solely by the Department in writing.

43. Upon OCC's receipt of the Department's written approval of the detailed design specifications and cost estimates, OCC shall implement the approved Remedial Action Alternatives in accordance with the schedule therein and in accordance with the approved detailed engineering design.

E. Additional Remedial Investigation and Remedial Action

44. If at any time prior to OCC's receipt of written notice from the Department pursuant to paragraph 106 below the Department determines that the criteria set forth in Appendix E, Section I.D. are not being achieved, or that additional remedial investigation and/or remedial action is required to protect human health or the environment from any chromite ore processing residue, chromium and its compounds, whether or not any hazardous substances or pollutants are intermingled therewith, at, emanating from or which have emanated from the Sites, OCC shall conduct such additional activities as directed by the Department and in accordance with this Administrative Consent Order. If at any time prior to OCC's receipt of written notice from the Department pursuant to paragraph 106 below the Department determines that the criteria set forth in Appendix E, Section I.D. are not being achieved, or that additional remedial investigation and/or remedial action is required to protect human health or the environment from any hazardous substances and pollutants at, emanating from or which have emanated from the Diamond Site, OCC shall conduct such additional activities as directed by the Department in accordance with this Administrative Consent Order.

F. Additional Sites

45. For each additional site in Hudson County, identified by the Department, contaminated with chromite ore processing residue and chromium and its compounds from the Diamond Site, or which is adjacent to the Diamond Site or any of the Sites, and is contaminated by chromite ore processing residue, chromium and its compounds, emanating or which has emanated from the Diamond

Site or any of the Sites, OCC shall conduct, in accordance with the provisions of this Administrative Consent Order, interim remedial measures and a RI/FS, and shall design and implement a remedial action to remedy the problem associated with the chromite ore processing residue, chromium and its compounds whether or not any hazardous substances or pollutants are intermingled therewith.

46. Upon OCC's receipt of written notice from the Department of the existence of any additional site or sites identified pursuant to paragraph 45 above, OCC shall undertake the obligations set forth in paragraphs 25 through 43, above, regarding such additional site or sites and in accordance with the time periods set forth therein.

G. Progress Reports

47. Respondents shall submit to the Department quarterly progress reports; the first progress report shall be submitted on or before the thirtieth (30th) calendar day of the month following the first full quarter after the effective date of this Administrative Consent Order. Each progress report thereafter shall be submitted on or before the thirtieth (30th) calendar day of the month following the quarter being reported. Each progress report shall detail the status of Respondents' compliance with this Administrative Consent Order and shall include the following:

- a. Identification of the Site and reference to this Administrative Consent Order, including signatory parties and effective date;
- b. Identify specific requirements of this Administrative Consent Order (including the corresponding paragraph number or schedule) which were initiated during the reporting period;
- c. Identify specific requirements of this Administrative Consent Order (including the corresponding paragraph number or schedule) which were initiated in a previous reporting period, which are still in progress and which will continue to be carried out during the next reporting period;
- d. Identify specific requirements of this Administrative Consent Order (including the corresponding paragraph number or schedule) which were completed during the reporting period;
- e. Identify specific requirements of this Administrative Consent Order (including the corresponding paragraph numbers or schedule) which should have been completed during the scheduled reporting period and were not;
- f. An explanation of any potential non-compliance with any approved work plan(s), schedule(s) or Remedial Action Plan(s), and actions taken or to be taken to rectify any scheduled requirement not achieved; and

- g. Identify the specific requirements of this Administrative Consent Order (including the corresponding paragraph number or schedule) that will be initiated during the next reporting period.

III. Permits

48. This Administrative Consent Order shall not be construed to be a permit or in lieu of a permit for future activities which require permits and it shall not relieve OCC or CLH from obtaining and complying with all applicable Federal, State and local permits necessary for any future activities which OCC or CLH respectively must perform pursuant to this Administrative Consent Order.

49. OCC and CLH shall submit complete applications for all Federal, State and local permits required to carry out their respective obligations under this Administrative Consent Order in accordance with the approved time schedules.

50. Within forty-five (45) calendar days after OCC's or CLH's receipt of written comments from the permitting agency concerning any permit application to a Federal, State or local agency, or within a time period extended in writing by the Department, OCC or CLH shall modify the permit application to conform to the permitting agency's comments and resubmit the permit application to the agency. Within this timeframe for a Departmental permit, OCC or CLH may explain verbally or in writing to the Department, the reason(s) why OCC or CLH believes the Department's comments should not be incorporated. Representatives of the Department may meet with representatives of OCC or CLH within this timeframe to discuss OCC's or CLH's comments. The determination as to whether or not the permit application, as resubmitted, conforms with the agency's comments or is otherwise acceptable to the agency shall be made solely by the agency in writing.

51. The terms and conditions of any Federal, State or local permit or permit modification issued to OCC or CLH shall not be preempted by the terms and conditions of this Administrative Consent Order even if the terms and conditions of any such permit or permit modification are more stringent than the terms and conditions of this Administrative Consent Order. To the extent that the terms and conditions of any such permit or permit modification are substantially equivalent to the terms and conditions of this Administrative Consent Order, OCC and CLH hereby waives any rights they may have to a hearing on such terms and conditions; under all other circumstances, such hearing rights are specifically preserved.

52. OCC shall be responsible for obtaining all necessary Federal, State and local permits, licenses and other authorizations for existing or former activities at the Diamond Site. This Administrative Consent Order shall not be construed to be a permit or permit modification for existing or former activities which require permits or permit modifications, nor shall it preclude the Department from requiring that OCC apply for such permit or permit modification.

IV. Project Coordination

53. OCC and CLH shall submit to the Department all documents required by this Administrative Consent Order, including correspondence relating to force majeure issues, by certified mail, return receipt requested or by hand delivery with an acknowledgement of receipt form for the Department's signature. The date that the Department executes the receipt or acknowledgement will be the date the Department uses to determine OCC's and CLH's compliance with the requirements of this Administrative Consent Order and the applicability of stipulated penalties and any other remedies available to the Department.

54. Within seven (7) calendar days after the effective date of this Administrative Consent Order, OCC and CLH shall submit to the Department the name, title, address and telephone number of the individual who shall be the OCC and CLH contact for the Department for all matters concerning this Administrative Consent Order, and OCC and CLH shall designate an agent for the purpose of service for all matters concerning this Administrative Consent Order and shall provide the Department with the agent's name and address. The individual identified in the following paragraph shall be the Department's contact for OCC and CLH for all matters concerning this Administrative Consent Order.

55. OCC and CLH shall submit three (3) copies of all documents required by this Administrative Consent Order, unless otherwise directed by the Department, to:

Tom McKee, Section Chief
New Jersey Department of Environmental Protection
Division of Hazardous Waste Management
Responsible Party Cleanup Element, 5th Floor
CN-028
401 East State Street
Trenton, New Jersey 08625-0028

56. OCC shall notify, both verbally and in writing, the contact person listed above at least two weeks prior to the initiation of any field activities, other than IRM field activities, and 48 hours prior to initiation of any IRM field activities.

V. Financial Requirements

A. Financial Assurance

57. OCC shall submit to the Department as provided in this paragraph, financial assurance of fifty-one million five hundred thousand dollars (\$51,500,000.00). OCC shall:

- Within ten (10) business days after the effective date of this Administrative Consent Order, provide a total of twenty-four million dollars (\$24,000,000.00), of which twenty million dollars (\$20,000,000.00) will be in the form of either an irrevocable letter

40 of credit or performance bond, and deposit an initial payment of four million dollars (\$4,000,000.00) into a Chromium Sites Trust Fund created pursuant to a Chromium Sites Trust Agreement as provided for in this paragraph;

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- Within three hundred sixty-five (365) calendar days after the effective date of this Administrative Consent Order, deposit a second payment of seven million five hundred thousand dollars (\$7,500,000.00), less any interest earned by the Chromium Sites Trust Fund during the preceding year, into the Chromium Sites Trust Fund;
 - Within seven hundred thirty (730) calendar days after the effective date of this Administrative Consent Order, deposit a third payment of ten million dollars (\$10,000,000.00), less any interest earned by the Chromium Sites Trust Fund during the preceding year, into the Chromium Sites Trust Fund; and
 - Within one thousand ninety-five (1,095) calendar days after the effective date of this Administrative Consent Order, deposit a fourth payment of ten million dollars (\$10,000,000.00), less any interest earned by the Chromium Sites Trust Fund during the preceding year, into the Chromium Sites Trust Fund.
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A fully executed copy of the Chromium Sites Trust Agreement shall be submitted to the Department within one (1) business days after execution of this Administrative Consent Order by all parties hereto. Within one (1) business day after the execution of this Administrative Consent Order, OCC shall also establish an irrevocable standby trust fund, with an initial deposit of One Thousand Dollars (\$1,000) or an amount required by the issuing institution. The irrevocable letter of credit, the performance bond, the Standby Trust and the irrevocable Chromium Sites Trust Agreement shall meet the following requirements:

i. Irrevocable Letter of Credit

- a. Is identical to the wording specified in Appendix G for letters of credit, which is attached hereto and made a part hereof;
- b. Is issued by a Federally chartered bank, savings bank, or New Jersey State chartered bank, savings bank, or savings and loan association, which has its principal office in New Jersey; and
- c. Is accompanied by a letter from OCC referring to the letter of credit by number, issuing institution and date and providing the following information: the name and address of the facility and/or Site which is the subject of the Administrative Consent Order and the amount of funds securing the OCC's performance of all its obligations under the Administrative Consent Order.

ii. Performance Bond

- a. Is identical to the wording specified in Appendix G for performance bonds, which is attached hereto and made a part hereof;

- b. The surety company issuing the performance bond shall be among those listed as acceptable sureties on Federal bonds in the most recent version of Circular 570 issued by the U.S. Department of the Treasury, which is published annually on July 1 in the Federal Register; and
- c. Is accompanied by a letter from OCC referring to the performance bond by number, issuing institution and date and providing the following information: the name and address of the facility and/or Site which is the subject of the Administrative Consent Order and the amount of funds securing OCC's performance of all its obligations under the Administrative Consent Order.

iii. Standby Trust

- a. Is identical to the wording specified in Appendix H, which is attached hereto and made a part hereof;
- b. At the discretion of the Department, the irrevocable standby trust fund shall be the depository for all funds paid pursuant to a draft by the Department against the letter of credit or payments made under the performance bond as directed by the Department;
- c. The trustee shall be an entity which has the authority to act as a trustee and whose trust operations are regulated and examined by a Federal or New Jersey agency; and
- d. Is accompanied by an executed certification of acknowledgement that is identical to the wording specified in Appendix H.

iv. Chromium Sites Trust Agreement

- a. Is identical to the wording specified in Appendix I, which is attached hereto and made a part hereof;
- b. The Trustee shall be an entity which has the authority to act as a trustee and whose trust operations are regulated and examined by a Federal or New Jersey agency; and
- c. Is accompanied by an executed certification of acknowledgement that is identical to the wording specified in Appendix I.

58. No further financial assurance shall be required of Respondents under this Administrative Consent Order. However, Respondents hereby expressly agree that the financial assurance as provided for in paragraph 57 above, is not a limit on spending or liability.

59. OCC shall establish and maintain the standby trust fund until terminated by the written agreement of the Department, the trustee and OCC, or of the trustee and the Department if OCC ceases to exist. OCC shall maintain the letter of credit or performance bond until the Department provides written notification to OCC that the financial assurance is no longer required for

compliance with this Administrative Consent Order. OCC and CLH shall establish and maintain the Chromium Site Trust Fund until terminated by the written agreement of the Department, the trustee, OCC and CLH, or of the trustee and the Department if OCC and CLH cease to exist, or until such fund is exhausted following the fourth payment into such fund as set forth above. In the event that the Department determines that OCC has failed to perform any of its obligations under this Administrative Consent Order, the Department may proceed to have the financial assurance deposited into the standby trust; provided, however, that before the Department takes this action, the Department shall notify OCC in writing of the obligation(s) which it has not performed, and OCC shall have thirty (30) calendar days after receipt of such notice, unless extended in writing by the Department, to remedy the failure to perform such obligation(s). In the event that the Department draws down on OCC's letter of credit, the Chromium Site Trust Fund, performance bond or other financial assurance, it is agreed that nothing in this Administrative Consent Order shall preclude the Respondents from exercising whatever rights they may have, if any, to challenge the Department's action as provided for in paragraph 78 below.

60. At any time, OCC may apply to the Department to substitute other financial assurances in a form, manner and amount acceptable to the Department.

61. OCC agrees that for the purposes of complying with the financial assurance requirements of this Administrative Consent Order, OCC shall select a financial institution or surety, and a trustee, that shall agree in writing to be subject to the jurisdiction of New Jersey courts for all claims made by the Department against the financial assurance.

B. Project Cost Review

62. Beginning three hundred sixty-five (365) calendar days after the effective date of this Administrative Consent Order and annually thereafter on that same calendar day, Respondents shall submit to the Department a detailed review of all costs required for Respondents compliance with this Administrative Consent Order. Respondents shall also submit such a detailed review within fourteen (14) calendar days after its award of a contract or contract modification for the implementation of the remedial alternate for the Diamond Site and each of the Sites. This cost review shall include a detailed summary of all monies spent to date pursuant to this Administrative Consent Order for such Site, the estimated cost of all future expenditures required to comply with this Administrative Consent Order (including any operation and maintenance costs) for such Site, and the reason for any changes from the previous cost review submitted by Respondents for the Diamond Site and each of the Sites.

63. Simultaneous with the submission of any cost review required by paragraph 62 above ~~after OCC makes the fourth payment into the Chromium Sites Trust Fund~~, OCC may request the Department's approval to reduce the amount of the financial assurance to reflect the remaining costs of performing its obligations under this Administrative Consent Order. Upon receipt of the Department's written response to this request, OCC shall either shall maintain compliance with the then existing financial assurance requirement or amend to

reduce it in accordance with the Department's written response. If the Department grants written approval of the request, OCC may amend the amount of the then existing financial assurance so that it is equal to or greater than the estimated remaining costs of performing the obligations required by this Administrative Consent Order.

C. Oversight Cost Reimbursement

64. Within thirty (30) calendar days after OCC's receipt from the Department of a summary of the costs, including cost documentation that verifies that the claimed costs were incurred and that the amount of the costs was properly calculated, and will include the amount, date, entity or person to whom the costs were paid or by whom the costs were incurred in connection with its oversight functions of this Administrative Consent Order for a fiscal year, or any part thereof, OCC shall submit to the Department a cashier's or certified check payable to the "Treasurer, State of New Jersey" for the full amount of the Department's oversight costs.

D. Stipulated Penalties

65. Within thirty (30) calendar days after either Respondent's receipt of a written demand made by the Department, such Respondent shall pay stipulated penalties to the Department for such Respondent's failure to comply with any of the deadlines or schedules applicable to it and required by this Administrative Consent Order including those established and approved by the Department in writing pursuant to this Administrative Consent Order. Each deadline or schedule not complied with shall be considered a separate violation and stipulated penalties shall begin to accrue on the first calendar day following the day that performance is due or noncompliance occurs and shall continue to accrue through the final day of correction of the non-compliance. The Department may determine that a submittal of insufficient quality constitutes a non-compliance. Stipulated penalties for such violations shall only accrue for sixty (60) calendar days unless the Department provides OCC or CLH written notice that stipulated penalties continue to accrue from the date of receipt by Respondents until Respondents correct the non-compliance. Interest shall accrue on any unpaid stipulated penalties commencing on the first day following the end of the thirty (30) day pay period. The interest rate shall be that rate set forth in the New Jersey Court Rules, R. 4:42-11(a)i. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Administrative Consent Order. In addition, failure to pay a stipulated penalty on time shall be additional violation of this Administrative Consent Order subject to stipulated penalties.

66. Respondents' payment of stipulated penalties for Respondents' failure to comply with the deadlines and schedules associated with the major deliverables and tasks required by this Administrative Consent Order, as identified below, shall be made according to the following schedule, unless the Department has modified the compliance date pursuant to the force majeure provisions set forth herein:

Major Deliverables and Tasks

- timely delivery of all draft and final workplans
- timely delivery of all draft and final reports and designs

- performance of remedial activities including interim remedial measures
- implementation of all approved workplans
- compliance with financial assurance requirements
- payments of penalty settlements and timely reimbursement of prior costs
- timely payment of oversight costs
- timely implementation and recording of permanent use and/or access restrictions

<u>Calendar Days After Due Date</u>	<u>Stipulated Penalties</u>
1 - 7	\$ 1,000 per calendar day
8 - 14	\$ 2,000 per calendar day
15 - 21	\$ 3,000 per calendar day
22 - 28	\$ 5,000 per calendar day
29 - over	\$ 10,000 per calendar day

67. Payment of stipulated penalties for all violations other than set out in paragraph 65 above, shall be made according to the following schedule unless the Department has modified the compliance date pursuant to the force majeure provisions set forth herein:

<u>Calendar Days After Due Date</u>	<u>Stipulated Penalties</u>
1 - 7	\$ 100 per calendar day
8 - 14	\$ 500 per calendar day
15 - 21	\$ 1,000 per calendar day
22 - 28	\$ 2,500 per calendar day
29 - over	\$ 5,000 per calendar day

68. Payment of stipulated penalties shall be made by a cashier's or certified check payable to the "Treasurer, State of New Jersey" and shall be accompanied by a letter referencing this Administrative Consent Order and the alleged violations for which the penalty is submitted.

69. Each Respondent agrees that it shall not seek to take as a tax deduction any payments submitted pursuant to the above paragraphs.

70. Respondents' failure to pay stipulated penalties pursuant to a written demand issued by the Department in accordance with paragraph 65 above shall constitute a violation of this Administrative Consent Order.

71. The payment of stipulated penalties does not alter the responsibility of Respondents to complete any requirement of this Administrative Consent Order.

VI. Force Majeure

72. If any event as specified in the following paragraph occurs which Respondents believe or should believe will or may cause delay in the compliance with any provision of this Administrative Consent Order, Respondents shall notify the Department in writing within seven (7) calendar days of the delay or anticipated delay, as appropriate, referencing this paragraph and describing

the anticipated length of the delay, the precise cause or causes of the delay, any measures taken or to be taken to minimize the delay, and the time required to take any such measures to minimize the delay. Respondents shall take all necessary action to prevent or minimize any such delay.

73. If the Department finds that: (i) Respondents have complied with the notice requirements of the preceding paragraph; (ii) any delay or anticipated delay has been or will be caused by fire, flood, riot, strike or other circumstances beyond the control of Respondents; and, (iii) Respondents have taken all actions that were reasonably necessary to prevent or minimize any such delay, the Department shall extend the time for performance hereunder for a period no longer than the delay resulting from such circumstances. If the Department determines that (a) Respondents have not complied with the notice requirements of the preceding paragraph; (b) the event causing the delay is not beyond the control of Respondents; or (c) Respondents have not taken all necessary actions that were reasonable to prevent or minimize the delay, this paragraph shall not be applicable and failure to comply with the provisions of this Administrative Consent Order shall constitute a breach of the requirements of this Administrative Consent Order. The burden of proving that any delay is caused by circumstances beyond the control of Respondents and the length of any such delay attributable to those circumstances shall rest with Respondents. Delay in an interim requirement shall not automatically constitute force majeure with respect to the attainment of subsequent requirements. Force majeure shall not include the following: nonattainment of the goals, standards, guidelines and requirements set forth in the appendices attached hereto or otherwise applicable to the Site; increases in the costs or expenses incurred by Respondents in fulfilling the requirements of this Administrative Consent Order; and, contractor's breach, unless such breach falls within the requirements of (i), (ii) and (iii) of this paragraph.

VII. Reservation of Rights

74. The Department reserves the right to unilaterally terminate this Administrative Consent Order in the event OCC and/or CLH violates the terms or fails to meet the obligations of this Administrative Consent Order.

75. Except as provided for in paragraph 22 above, nothing in this Administrative Consent Order shall preclude the Department from seeking civil or administrative penalties or any other legal or equitable relief against OCC and/or CLH for matters not set forth in the FINDINGS of this Administrative Consent Order.

76. This Administrative Consent Order shall not be construed to affect or waive the claims of federal or State natural resource trustees against any party for damages for injury to, destruction of, or loss of natural resources.

77. The Department reserves the right to require OCC and/or CLH to take or arrange for the taking of, any and all additional measures should the Department determine that such actions are necessary to protect human health or the environment. Nothing in this Administrative Consent Order shall constitute a waiver of any statutory or common law right of the Department to require OCC and/or CLH to undertake such additional measures should the Department

determine that such measures are necessary; nor shall anything in this Administrative Consent Order constitute a waiver by OCC or CLH of any statutory or common law defenses, if any, to any attempted action by the Department as to such additional measures.

78. Nothing in this Administrative Consent Order, including OCC's and/or CLH's payment of stipulated penalties, shall preclude the Department from seeking civil or civil administrative penalties or any other legal or equitable relief against OCC and/or CLH for violations of this Administrative Consent Order. In any action brought by the Department under this Administrative Consent Order, the Respondents may raise, inter alia, a defense that the Respondents failed to comply with a decision of the Department, made pursuant to this Administrative Consent Order, on the basis that the Department's decision was arbitrary, capricious or unreasonable. If a Respondent is successful in establishing such a defense, then Respondent shall not be liable for stipulated penalties for failure to comply with that particular Department decision. Similarly, in the event that OCC prevails in any proceeding in which OCC alleges that the Department acted arbitrarily, capriciously or unreasonably in exercising its right under paragraph 59, above, to draw on the ~~letter of credit~~, the Department agrees to refund, to the account of the ~~letter of credit~~, the funds so drawn relative to the contested enforcement action. This provision shall not be construed to provide for reimbursement of the account of the ~~letter of credit~~ for monies drawn for any activity other than that which is the subject of the contested enforcement proceeding in which OCC prevails. Respondents shall not seek pre-enforcement review of any decision made or to be made by the Department pursuant to this Administrative Consent Order. Without otherwise affecting any rights which the Respondents may have, it is agreed that nothing in this Administrative Consent Order shall preclude the Respondents from exercising whatever rights they may have, if any, to challenge any determination by the Department which results in the draw down by the Department of OCC's financial assurance under paragraph 59 above, after correction by the Department of the alleged violation(s) which led the Department to draw down the financial assurance and to use such monies to correct the alleged violation(s).

VIII. General Provisions

79. This Administrative Consent Order shall be binding on each signatory to this Administrative Consent Order and their respective agents, successors, assignees and any trustee in bankruptcy or receiver appointed pursuant to a proceeding in law or equity.

80. The Respondents shall perform all work conducted pursuant to this Administrative Consent Order in accordance with prevailing professional standards.

81. All site operations shall be conducted by OCC in accordance with the Health and Safety plan developed as set forth in Appendix B. All site activities shall be conducted in accordance with all general industry (29 CFR 1910) and construction (29 CFR 1926) standards of the federal Occupational Safety and Health Administration (OSHA), U.S. Department of Labor, as well as any other State or municipal codes or ordinances that may apply. The

Respondents shall comply with those requirements set forth in OSHA's final rule entitled "Hazardous Waste Operations and Emergency Response", Section 1910.120 of Subpart H of 29 CFR (published March 6, 1989, Volume 54, Number 42, Federal Register).

82. In accordance with N.J.S.A. 45:8-45, all plans or specifications involving professional engineering, submitted pursuant to this Administrative Consent Order, shall be submitted affixed with the seal of a professional engineer licensed pursuant to the provisions of N.J.S.A. 45:8-f et seq.

83. All appendices referenced in this Administrative Consent Order, as well as all reports, work plans and documents required under the terms of this Administrative Consent Order that have received approval from the Department, are incorporated into and made a part of this Administrative Consent Order.

84. Each field activity to be conducted pursuant to this Administrative Consent Order shall be coordinated by an on-site professional(s) with experience relative to the particular activity being conducted at the Site each day, such as experience in the area of hydrogeology, geology, environmental controls, risk analysis, health and safety or soils.

85. Upon the receipt of a written request from the Department, Respondents shall submit to the Department all data and information developed pursuant to this Administrative Consent Order in Respondents' possession or control, or which Respondents can reasonably bring under their control, concerning pollution at and/or emanating from the Diamond Site or the Sites, or which has emanated from the Diamond Site and the Sites, including raw sampling and monitor data, whether or not such data and information was developed pursuant to this Administrative Consent Order. Respondents reserve whatever rights if any, to assert a privilege regarding such documents.

86. Respondents shall make available to the Department all technical records and contractual documents maintained or created by Respondents or their agents in connection with this Administrative Consent Order. Respondents reserve whatever rights if any, to assert a privilege regarding such document. The Department shall hold confidential the commercial terms, including rates and payment terms, of any contractual documents made available pursuant to this paragraph; and Respondents may delete such commercial terms from any copies supplied to the Department.

87. Except as provided for in paragraph 86 above, in order to assert a claim of confidentiality or privilege for any information submitted by the Respondents pursuant to this Administrative Consent Order, the Respondent asserting such a claim shall follow the Department's procedures in N.J.A.C. 7:14A-11.

88. Respondents shall preserve, during the pendency of this Administrative Consent Order and for a minimum of six (6) years after its termination, all data, records and documents in their possession or in the possession of their divisions, employees, agents, accountants, contractors, or attorneys which relate in any way to the implementation of work under this Administrative Consent Order, despite any document retention policy to the

contrary. After this six (6) year period, Respondents may make a written request to the Department to discard any such documents. Such a request shall be accompanied by a description of the documents involved. The Department will respond in writing to Respondents within ninety (90) calendar days after such request, as to its determination and with the specific basis for any denial. Respondents may deliver to the Department any or all records required to be kept longer than six (6) years. Upon written approval by the Department, Respondents may discard only those documents that the Department specifically determines are not required to be preserved for a longer time period. Upon receipt of a written request by the Department, the Respondents shall submit to the Department all records or copies of any such records. Respondents reserve whatever rights if any, to assert a privilege regarding such documents.

89. Except as provided otherwise in schedules expressly set forth in this Administrative Consent Order or in approved workplans hereunder, upon a written request from the Department, Respondents shall submit, according to a time schedule established by the Department, any information necessary for the implementation of this Administrative Consent Order. Respondents reserve whatever rights if any, to assert a privilege regarding such documents.

90. Obligations of this Administrative Consent Order are imposed pursuant to the police powers of the State of New Jersey for the enforcement of law and the protection of the public health, safety and welfare and are not intended to constitute debt or debts which may be limited or discharged in a bankruptcy proceeding.

91. In addition to the Department's statutory and regulatory rights to enter and inspect, Respondents shall allow the Department and its authorized representatives access to the Diamond Site and the Sites at all times under the same conditions under which Respondents have access for the purpose of monitoring Respondents compliance with this Administrative Consent Order and/or to perform any remedial activities OCC fails to perform as required by this Administrative Consent Order. The Department's and its authorized representatives' access hereunder shall be conditioned upon their compliance with the applicable Site's Health and Safety Plan to the maximum extent practicable as determined by the Department.

92. Respondents shall not construe any informal advice, guidance, suggestions, or comments by the Department, or by persons acting on behalf of the Department, as relieving Respondents of their obligation to obtain written approvals as required herein, unless the Department specifically relieves Respondents of such obligations in writing.

93. No modification or waiver of this Administrative Consent Order shall be valid except by written amendment to this Administrative Consent Order duly executed by OCC, CLH and the Department.

94. Respondents hereby consent to and agree to comply with the provisions of this Administrative Consent Order applicable to them, respectively, which shall be fully enforceable as an Order in the New Jersey Superior Court upon the filing of a summary action for compliance pursuant to N.J.S.A. 13:1D-1 et seq., the Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq.

95. Respondents waive their rights to an administrative hearing concerning the entry of this Administrative Consent Order.

96. Respondents agree not to contest the authority or jurisdiction of the Department to issue this Administrative Consent Order; Respondents further agree not to contest the terms or conditions of this Administrative Consent Order except as to interpretation or application of such terms and conditions in any action brought by the Department to enforce the provisions of this Administrative Consent Order.

97. In the event that the Department determines that a public meeting concerning the cleanup of the Diamond Site and/or any of the Sites is necessary at any time, Respondents shall ensure that their appropriate representatives are prepared, available, and participate in any such meeting upon reasonable notification from the Department of the date, time and place of any such meeting.

98. OCC shall provide a copy of this Administrative Consent Order to each chief contractor and chief subcontractor retained to perform the work required by this Administrative Consent Order. Chief contractor or subcontractor shall be those whose contracts hereunder have a total planned or actual value exceeding \$25,000. OCC shall be responsible to the Department for ensuring that their contractors and subcontractors perform the work herein in accordance with this Administrative Consent Order.

99. CLH shall give written notice of this Administrative Consent Order to any successor in interest within ninety (90) calendar days prior to transfer of ownership of the Diamond Site, and shall simultaneously verify to the Department that such notice has been given. This requirement shall be in addition to any other statutory or regulatory requirements arising from the transfer of ownership of the Diamond Site.

100. Respondents agree not to bring an action or maintain any existing or future claim or demand upon any State fund(s), established for the purpose of remediating or responding to environmental contamination, including the New Jersey Spill Compensation Fund, N.J.S.A. 58:10-23.11i and the Sanitary Landfill Facility Contingency Fund, N.J.S.A. 13:1E-100 et seq., for the cost of investigation and remediation or any other actions required by this Administrative Consent Order and for damages sustained by Respondents, their predecessor's or their successors and assigns as a result of contamination attributable to Respondents or their predecessors' at the Diamond Site or any of the Sites provided however, Respondents do not release or waive any right they may have to seek damages otherwise from any other responsible party for such costs or damages.

101. Respondents shall provide to the Department written notice of a dissolution of their corporate or partnership identity or liquidation of its assets at least thirty (30) calendar days prior to such dissolution or liquidation. Respondents shall also provide written notice to the Department of a filing of a petition for bankruptcy no later than the time for giving notice of such filing to creditors or as otherwise required by law. Upon receipt of notice of dissolution of corporate or partnership identity, or liquidation of assets, except in the case of a bankruptcy filing, the Department may require that OCC apply to obtain additional financial assurance and thereafter submit to the Department additional financial assurance.

102. Within thirty (30) calendar days after the effective date of this Administrative Consent Order, CLH shall record, with respect to the Diamond Site, a notice of the existence of this Administrative Consent Order, and where and how a copy may be obtained from OCC and/or CLH, with the County Clerk, Hudson County, State of New Jersey.

103. The Diamond Site may be freely alienated provided that:

a. At least ninety (90) calendar days prior to the date of such alienation, CLH shall notify the Department in writing of the proposed alienation, the name of the grantee, and a description of the grantor's obligations, if any, proposed to be performed by such grantee.

b. Any contract to alienate the Diamond Site shall require the grantee to allow and provide access for the implementation, continuation and oversight of all activities and obligations pursuant to this Administrative Consent Order. Respondents' obligations under this Administrative Consent Order shall continue unless the grantee agrees to assume Respondents' obligations and unless the Department in its sole discretion agrees to allow the grantee to assume the obligations of the Respondents.

c. Any deed, title or other instrument of conveyance regarding the Diamond Site shall contain a notice that the Diamond Site is the subject of this Administrative Consent Order. Any such deed, title, or instrument of conveyance shall be subject to the requirements set forth therein, regarding the use of the Diamond Site and permanent deed restrictions.

d. Nothing herein shall relieve the Respondents of their obligations to comply with all applicable statutes and rules relating to the alienation of the Diamond Site.

104. Respondents agree not to make any use of or take any actions at the Diamond Site inconsistent with this Administrative Consent Order. CLH agrees to impose such use and/or access deed restrictions regarding the Diamond Site as may be deemed necessary by the Department. The use and access restrictions shall run with the land, shall be for the benefit of and enforceable by the Department and the citizens of the State of New Jersey and shall provide actual and constructive notice to any subsequent grantee of the existence of this Administrative Consent Order and the contamination at the Diamond Site. CLH shall place permanent use and access restrictions in the record of title for the Diamond Site and shall record the restrictions with the Hudson County Clerk within thirty (30) calendar days after receipt of written request of the Department that CLH do so. Furthermore, the Respondents agree not to make any use of or take any action at the Diamond Site and the Sites and all other site(s) in Hudson County to be identified pursuant to this Administrative Consent Order, inconsistent with this Administrative Consent Order.

105. As soon as reasonably possible, but not greater than thirty (30) calendar days following the execution of this Administrative Consent Order, OCC and CLH shall each submit to the Department, along with the executed original Administrative Consent Order, the appropriate documentary evidence (such as a corporate resolution) that each signatory for OCC and CLH have the authority to bind OCC and CLH, respectively, to the terms of this Administrative Consent Order. Each undersigned representative, however, certifies that he or she is fully authorized by the party which he or she represents to enter into the terms and conditions of this Administrative Consent Order and to bind that entity to it.

106. Except as to paragraph 86, and the December 2, 1988 Directive to the extent that the Department notified the Respondents in writing that the Respondents addressed the Sites in satisfaction of the December 2, 1988 Directive, the requirements of this Administrative Consent Order shall be deemed satisfied upon the receipt by Respondents of written notice from the Department that Respondents have demonstrated, to the satisfaction of the Department, that the obligations imposed by this Administrative Consent Order have been completed by Respondents.

107. Except as provided for in paragraph 22 above, by entering into this Administrative Consent Order, the Department does not waive its right to assess or collect civil or civil administrative penalties for past, present and future violations by the Respondents of any New Jersey environmental statutes or regulations.

108. The obligations and liabilities of any non-signatories to this Administrative Consent Order shall not be discharged or extinguished by this Administrative Consent Order.

109. Respondents admit that they have agreed to comply with the terms of this Administrative Consent Order. Neither the entry into this Administrative Consent Order nor the conduct of the Respondents hereunder, shall be construed as any admission of fact, fault or liability by the Respondents under any applicable laws or regulations.

110. This Administrative Consent Order shall become effective upon the execution by all parties hereto.

DEPARTMENT OF ENVIRONMENTAL PROTECTION

Date: 4-17-90

By: Ronald T. Corcory
Ronald T. Corcory, Assistant Director
Responsible Party Cleanup Element
Division of Hazardous Waste Management

Date: 4/2/90

OCCIDENTAL CHEMICAL CORPORATION (successor
to Diamond Shamrock Chemicals Company)

By: Michael J. Rudick
Name: Michael J. Rudick

Title: Vice President and General
Counsel

Date: 4/3/90

CHEMICAL LAND HOLDINGS, INC.

By: D. L. Smith
Name: D. L. Smith

Title: President

ATTACHMENT ONE

ATTACHMENT ONE
CHROMATE CHEMICAL PRODUCTION WASTE SITES*

<u>Site#**</u>	<u>Site Name</u>	<u>Location</u>	<u>Block</u>	<u>Lots</u>
40	Pen Horn Creek	Pen Horn Avenue	45	4,5,6
41	St. Johnsbury Trucking	O'Brien and Sellers Streets	134	9,10,11
42	3rd & Adams Sts. ECIS Trucking	3rd & Adams Sts.	293	1,2
45	Emco (aka Dupont Tract #1)	O'Brien Road	150	4A
46	Jenkins Enterprises aka Garfield Ave. #1	79-85 3rd Ave.	229	27
47	Goldies Auto Parts	1010 Belleville Tpk.	286	37.B
48	Clinton Cartage, (aka Clinton Service Warehouse)	1000 Belleville Tpk.	286	37.C
49	Arden Chemical/aka American Chlorine	100 Hackensack Ave.	298	12,12R,14,15
50	Janatex Company	933 Belleville Tpk.	287	35-39
51	Kearny Twp. Site #1	Belleville Tpk.	287	31
52	Kenney Steel Treating Co.	100 Quincy Place	226	12
53	Kleerkast Inc.	450 Schuyler Avenue	226	11
54	Pfaff Tool & Mfg.	McWhertle & Gross St.	151	11,10
55	New Rent Trucking (aka New Rent Inc.)	520 Belleville Tpk.	134	5
56	NJ Turnpike Kearny	Belleville & Old Newark Branch	287	23
58	Nicole's Warehouse N/F Ru Son	996 Belleville Tpk.	286	37.A
59	Trumbull Asphalt	Newark Turnpike	286	67
60	Tullo Exxon Station aka Tullo Truck Stop - Lincoln Hwy	61 Lincoln Highway	290	4,5

<u>Site#*</u>	<u>Site Name</u>	<u>Location</u>	<u>Block</u>	<u>Lots</u>
61	Turco Industiral Area	590 Belleville Tpk.	134	1,6,7,8
62	West Hudson Lumber Co.	60 Arlington Ave.	226	13
103	Amtrack Access Road	Belleville Tpk.	287	40,41
110	Frank's Auto Electric	200 Garfield Avenue	229	1
116	Standard Chlorine Site	Belleville Tpk.	287	46
126	Kuehne Chemical	86 Hackensack Ave.	298	10,11
131	Hackensack River Access Road	Belleville Tpk.	287	20R,27R, 33R

25

* Except for Site #40, which is located in the Town of Secaucus, all Sites are located in the Town of Kearny.

** Site Number as designated by the Department.